

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE:	)	Chapter 11 Case
	)	Number <u>89-10313</u>
GEORGIA ARM PROPERTIES, a	)	
California Limited Partnership	)	FILED
FEI #95-3494889	)	at 4 O'clock & 53 min. P.M.
	)	Date: 4-20-90
Debtor-in-Possession	)	
	)	
WINDOVER PROPERTIES, a	)	Chapter 11 Case
California Limited Partnership	)	Number <u>89-10314</u>
FEI #95-3494890	)	
	)	Consolidated for Administrative
Debtor-in-Possession	)	and Procedural Purposes under
	)	Case Number <u>89-10313</u>

ORDER

The United States Trustee objected to the application for compensation and reimbursement of expenses of Sutherland, Asbill, and Brennan (hereinafter "Sutherland") attorneys for debtors-inpossession in this consolidated Chapter 11 proceeding. No other party in interest objected to the Sutherland application, nor has any party in interest, including the United States Trustee, objected to the application of co-counsel for the debtors-in-possession, Mr. J. Benjamin Kay, III. Sutherland seeks approval of its application for attorneys fees in the amount of Thirty-Seven Thousand Two Hundred Forty-Seven and 50/100 (\$37,247.50) Dollars plus reimbursement for out-of-pocket expenses of Two Thousand Seven Hundred Twenty and 50/100 (\$2,720.50) Dollars for a total of Thirty-Nine Thousand Nine Hundred Sixty-Eight and No/100 (\$39,968.00) Dollars. Sutherland seeks to apply toward its fees funds of the debtors-in-possession held by it totaling Twenty-Nine Thousand Fifty-Four and 43/100 (\$29,054.43) Dollars with the balance to be paid by the debtors-in-possession. Mr. Kay seeks approval of attorney's fees totaling Thirteen Thousand Two Hundred Forty and No/100 (\$13,240.00) Dollars plus

reimbursement of out-of-pocket expenses in the amount of One Thousand One Hundred Twenty- Nine and 41/100 (\$1,129.41) Dollars, totaling Fourteen Thousand Three Hundred Sixty-Nine and 41/100 (\$14,369.41) Dollars. Mr. Kay seeks to apply toward his fees funds of the debtors-in-possession held by him totaling Seven Thousand Seven Hundred Fifty and 57/100 (\$7,750.57) Dollars with the balance of Six Thousand Six Hundred Eighteen and 84/100 (\$6,618.84) Dollars to be paid by the debtors-in-possession. The United States Trustee objects on two grounds. The United States

Trustee objects as excessive to a requested hourly rate by A. G.

Adams of Two Hundred and No/100 (\$200.00) Dollars per hour for 11.2 hours and Two Hundred Twenty- Five and No/100 (\$225.00) Dollars per hour for 81.8 hours charged in the application. The United States Trustee also objects as excessive to the application as it pertains to the requested fees charged by T. M. Bryne at a rate of One Hundred Sixty and No/100 (\$160.00) Dollars per hour for 22.1 hours and One Hundred Seventy and No/100 (\$170.00) Dollars per hour for

35.3 hours. Additionally, the United States Trustee objects as unreasonable to the following charges asserted by M. B. Griffin:

3/1/89	8.0 Prepare schedules of 20 largest unsecured creditors; review file; 2 tcs w/Ezra Howington.	
		\$75 \$600.00
3/2/89	11.5 Prepare applications for approval of employment of accountant and Ezra Howington; research memo on Bankruptcy Code Sec. 327; prepare creditor grids.	unsecured
		\$75 \$862.50
3/3/89	8.0 Letter to Ezra Howington; letter to Leonard Glusman; tc w/Mildred Lint; revised bankruptcy matrix; research on court approval of professional persons	
		\$75 \$600.00

Sutherland applied to this court for appointment as co-counsel of the debtors-in-possession in each case in accordance with 11 U.S.C. §327,

<sup>1</sup>11 U.S.C. §327 provides in part:

(a) [T]he trustee, with the court's approval, may employ one or more attorneys . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title [title 11].

11 U.S.C. §328 provides in part:

(a) The trustee . . . with the court's approval, may employ or authorize the employment of a professional person under section 327 . . . on any reasonable terms and conditions of employment, including on a retainer or an hourly basis, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

11 U.S.C. §329 provides in part:

(a) Any attorney representing a debtor in a case under this title [title 11], or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid

Bankruptcy Rule 2016(b) provides in part:

(b) Every attorney for a debtor, whether or not the attorney applies for compensation, shall file with the court within 15 days

application provided in relevant part:

6. The retainer will be charged by the firm  
. . . for the value of services rendered at the standard  
hourly rates charged by the firm  
. . . and for out-of-pocket expenses incurred.

The "standard hourly rates charged by the firm" were not disclosed. The order approving the retention of the firm provided that the compensation for such attorneys was to be later fixed and determined in such manner as the court may direct.

In establishing reasonable compensation for counsel for a debtor-in-possession, this court must base its determination upon the nature, the extent, and the value of the legal services rendered, the time spent by counsel in rendering such services, and the cost of comparable services in other than a bankruptcy proceeding. 11 U.S.C. §330(a)(1).<sup>2</sup> Binding precedent in this circuit

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after the order for relief . . . the  
statement required by §329 . . . .

<sup>2</sup>11 U.S.C. §330 provides in part:

(a) After notice to any parties in interest and to the United States trustee and a hearing and subject to section 326, 328, and 329 of this title, the court may award . . . to the debtor's attorney

(1) reasonable compensation for actual, necessary services rendered by such attorney . . . based on the nature, the extent, and the value of such services, the time spent on such services, and the cost of comparable services other than in a case under this title; and

(2) reimbursement for actual, necessary expenses.

establishes the "lodestar" method, the reasonable time expended by counsel in performing the reasonably required services rendered multiplied by a reasonable hourly rate, as the means for fee determination. See, Norman v. Housing Authority for the City of Montgomery, 836 F.2d 1292 (11th Cir. 1988). A reasonable hourly rate is determined by the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation. Blum v. Stinson, 465 U.S. 886, 895 n. 11, 104 S.Ct. 1541, 1547 n. 11, 79 L.E.2d 891,

\_\_\_\_\_ n. 11 (1984). Accord, Gains v. Dougherty County Board of Education, 775 F.2d 1565, 1571 (11th Cir. 1985). The relevant legal community used in determining the prevailing market rate by this court is the legal community within the Southern District of Georgia. See, In re: S.T.N. Enterprises, 70 B.R. 823 (Bankr. D. Vt. 1987). While the applicant bears the burden of producing satisfactory evidence that the requested rate is in line with prevailing market rates, NAACP v. City of Evergreen, 812 F.2d 1332, 1338 (11th Cir., 1987), this court has previously established, from competent evidence presented, that an hourly rate not exceeding One Hundred and No/100 (\$100.00) Dollars per hour represents a reasonable hourly rate for competent legal services in this legal community. In re: Lighting Galleries, Ch. 11 Case No. 87-10455 (Bankr. S.D. Ga. 1987).

Sutherland does not urge a change in the prior determination of this court that an hourly rate not to exceed One Hundred and No/100 (\$100.00) Dollars per hour represents a reasonable hourly rate of compensation for legal services both within and outside the bankruptcy context within the Southern District of Georgia. Sutherland urges that this court should expand its provincial view of the relevant legal community to encompass not only the Southern District of Georgia, but the entire State of Georgia, including the Atlanta metropolitan area, the location of Sutherland's principal offices. This court has limited the scope

of the "relevant legal community" to the Southern District of Georgia because the economic impact of the typical bankruptcy petition upon the community at large is usually limited to the debtor's location and/or location of principal estate assets, within the Southern District of Georgia.<sup>3</sup> In re: S.T.N. Enterprises, supra. In the present case, while the debtors-in-possession are California limited partnerships, the sole asset of both partnerships consists of one apartment complex located within Richmond County, Georgia. All assets of the debtors are located within the Southern District of Georgia. The relevant legal community is the Southern District of Georgia.

In its application and presentation before this court, Sutherland failed to present any satisfactory evidence that its involvement as counsel for the debtor-in-possession resulted in any substantial savings to the estate, nor has Sutherland established

that the nature or complexity of this case or Sutherland's involvement in this case warrants any augmentation to the hourly rate limit of one hundred dollars per hour. See, Johnson v. Georgia Highway Express, 488 F.2d 714 (5th Cir. 1974); Curtis v. Pilgrim Health and Life Insurance Co. (In re: Curtis), 83 B.R. 85~

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<sup>3</sup>In In re: Rusco Industries, Ch. 7 Case No. 86-60031 (Bankr. S.D. Ga. 1986), in ruling upon a fee application for attorneys representing the equity security holders committee, this court determined that Rusco was a bankruptcy proceeding national in scope with manufacturing operations and assets located in several states and that shareholders, creditors and entities against whom the debtor held claims were located throughout the United States. Therefore, this court awarded reasonable attorneys fees at an hourly rate in excess of One Hundred and No/100 (\$100.00) Dollars per hour finding that the relevant legal community encompassed, as did the impact of this proceeding, not only the Southern District of Georgia, but the entire country. Pursuant to Bankruptcy Rules 2002(k) and 9008, general notices in Rusco are published in the Wall Street Journal.

(Bankr. S.D. Ga. 1988); In re: Washington Manufacturing Company, 101 B.R. 944 (Bankr. M.D. Tenn. 1989); In re: S.T.N. Enterprises, supra; In re: Baldwin United Corp., 36 B.R. 401 (Bankr. S. D. Ohio 1984). In its application, Sutherland has failed to establish any basis for an award of an hourly rate in excess of the maximum prevailing market rate in the relevant legal community, the Southern District of Georgia, and from an independent examination of the record in this case by this court, no such hourly rate deviation appears appropriate.

As it pertains to the objection to the hours charged by M.B. Griffin, from the application and the review of the record of these Chapter 11 proceedings, the hours charged are unreasonable. As there are not twenty (20) unsecured creditors, a charge on March 1, 1989, of eight (8) hours work in the preparation of the schedules of the twenty (20) largest unsecured creditors, file review, and two telephone conferences is grossly excessive. From the application, the description of the services performed during the hours charged on March 1, 2, and 3, 1989, consist primarily of unsupported file review and research. Such a description of the services rendered

is too vague and insufficient to justify the claimed charges. The fact that the attorney may have in fact incurred the hours set forth in the billing statement does not render the charge reasonable. The attorney is required to exercise billing judgment and make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary. Hensley v. Eckerhart, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983). As it pertains to the hours objected to by the United States trustee, Sutherland, failed to exercise reasonable billing judgment, and the hours to be allowed from the billing by M.B. Griffin on March 1, 2 and 3, 1989, are reduced to 13.75 hours.

Having determined that an hourly rate not to exceed one hundred dollars represents a reasonable hourly rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation,

and that counsel failed to exercise reasonable billing judgment to remove excessive time charged from the billing statement, it is ORDERED that the objection of the United States Trustee is sustained. The allowed hourly rate for Sutherland, Asbill, and Brennan is allowed at a rate not to exceed One Hundred and No/100 (\$100.00) Dollars per hour, and the allowed hours of M.B. Griffin charged on March 1, 2, and 3, 1989, are reduced to 13.75 hours. The reimbursement of out-of-pocket expenses is approved as set forth in the application. The total compensation including reimbursement of out-of-pocket expenses

to Sutherland, Asbill, and Brennan on its application filed February 15, 1990, is ORDERED allowed to the extent of Twenty-Three Thousand Seven Hundred Ninety-Four and 75/100 (\$23,794.75) Dollars.

As it pertains to the application of Mr. Kay, the hourly rate charged of One Hundred and No/100 (\$100.00) Dollars per hour represents the prevailing market rate in this relevant legal community and is approved. The hours as set forth in the application appear reasonable and necessary and are approved, as are the out-of-pocket expenses requested. It is, therefore, further ORDERED that total attorney's fees and out-of-pocket expenses to Mr. J. Benjamin Kay, III are allowed in the amount of Fourteen Thousand Three Hundred Sixty-Nine and 41/100 (\$14,369.41) Dollars.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 20th day of April, 1990.